

SEXUAL VIOLENCE PROTECTIVE ORDERS

2019 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: V. Lowry Snow

Senate Sponsor: Curtis S. Bramble

LONG TITLE

General Description:

This bill establishes the Sexual Violence Protection Act.

Highlighted Provisions:

This bill:

- ▶ defines terms and modifies definitions;
 - ▶ creates a sexual violence protective order and an ex parte sexual violence protective order;
 - ▶ establishes procedures for the application, modification, and enforcement of a sexual violence protective order and an ex parte sexual violence protective order;
- and
- ▶ requires that a sexual violence protective order and a dating violence protective order be placed on the statewide warrant system.

Money Appropriated in this Bill:

None

Other Special Clauses:

This bill provides a special effective date.

Utah Code Sections Affected:

AMENDS:

53-10-208, as last amended by Laws of Utah 2009, Chapters 292 and 356

53-10-208.1, as last amended by Laws of Utah 2011, Chapter 366

78B-7-201, as renumbered and amended by Laws of Utah 2008, Chapter 3

29 ENACTS:

30 **78B-7-501**, Utah Code Annotated 1953

31 **78B-7-502**, Utah Code Annotated 1953

32 **78B-7-503**, Utah Code Annotated 1953

33 **78B-7-504**, Utah Code Annotated 1953

34 **78B-7-505**, Utah Code Annotated 1953

35 **78B-7-506**, Utah Code Annotated 1953

36 **78B-7-507**, Utah Code Annotated 1953

37 **78B-7-508**, Utah Code Annotated 1953

38 **78B-7-509**, Utah Code Annotated 1953

39

40 *Be it enacted by the Legislature of the state of Utah:*

41 Section 1. Section **53-10-208** is amended to read:

42 **53-10-208. Definition -- Offenses included on statewide warrant system --**
43 **Transportation fee to be included -- Statewide warrant system responsibility -- Quality**
44 **control -- Training -- Technical support -- Transaction costs.**

45 (1) "Statewide warrant system" means the portion of the state court computer system
46 that is accessible by modem from the state mainframe computer and contains:

- 47 (a) records of criminal warrant information; and
- 48 (b) after notice and hearing, records of protective orders issued pursuant to:
 - 49 (i) Title 77, Chapter 36, Cohabitant Abuse Procedures Act; [σ]
 - 50 (ii) Title 78B, Chapter 7, Part 1, Cohabitant Abuse Act[-];
 - 51 (iii) Title 78B, Chapter 7, Part 4, Dating Violence Protection Act; or
 - 52 (iv) Title 78B, Chapter 7, Part 5, Sexual Violence Protection Act.

53 (2) (a) The division shall include on the statewide warrant system all warrants issued
54 for felony offenses and class A, B, and C misdemeanor offenses in the state.

55 (b) The division shall include on the statewide warrant system all warrants issued for

56 failure to appear on a traffic citation as ordered by a magistrate under Subsection 77-7-19(3).

57 (c) For each warrant, the division shall indicate whether the magistrate ordered under
58 Section 77-7-5 and Rule 6, Utah Rules of Criminal Procedure, that the accused appear in court.

59 (3) The division is the agency responsible for the statewide warrant system and shall:

60 (a) ensure quality control of all warrants of arrest or commitment and protective orders
61 contained in the statewide warrant system by conducting regular validation checks with every
62 clerk of a court responsible for entering the information on the system;

63 (b) upon the expiration of the protective orders and in the manner prescribed by the
64 division, purge information regarding protective orders described in Subsection 53-10-208.1(4)
65 within 30 days of the time after expiration;

66 (c) establish system procedures and provide training to all criminal justice agencies
67 having access to information contained on the state warrant system;

68 (d) provide technical support, program development, and systems maintenance for the
69 operation of the system; and

70 (e) pay data processing and transaction costs for state, county, and city law
71 enforcement agencies and criminal justice agencies having access to information contained on
72 the state warrant system.

73 (4) (a) Any data processing or transaction costs not funded by legislative appropriation
74 shall be paid on a pro rata basis by all agencies using the system during the fiscal year.

75 (b) This Subsection (4) supersedes any conflicting provision in Subsection (3)(e).

76 Section 2. Section 53-10-208.1 is amended to read:

77 **53-10-208.1. Magistrates and court clerks to supply information.**

78 Every magistrate or clerk of a court responsible for court records in this state shall,
79 within 30 days of the disposition and on forms and in the manner provided by the division,
80 furnish the division with information pertaining to:

81 (1) all dispositions of criminal matters, including:

82 (a) guilty pleas;

- 83 (b) convictions;
- 84 (c) dismissals;
- 85 (d) acquittals;
- 86 (e) pleas held in abeyance;
- 87 (f) judgments of not guilty by reason of insanity for a violation of:
- 88 (i) a felony offense;
- 89 (ii) Title 76, Chapter 5, Offenses Against the Person; or
- 90 (iii) Title 76, Chapter 10, Part 5, Weapons;
- 91 (g) judgments of guilty with a mental illness;
- 92 (h) finding of mental incompetence to stand trial for a violation of:
- 93 (i) a felony offense;
- 94 (ii) Title 76, Chapter 5, Offenses Against the Person; or
- 95 (iii) Title 76, Chapter 10, Part 5, Weapons; or
- 96 (i) probations granted; [~~and~~]
- 97 (2) orders of civil commitment under the terms of Section [62A-15-631](#);
- 98 (3) the issuance, recall, cancellation, or modification of all warrants of arrest or
- 99 commitment as described in Rule 6, Utah Rules of Criminal Procedure and Section [78B-6-303](#),
- 100 within one day of the action and in a manner provided by the division; and
- 101 (4) protective orders issued after notice and hearing, pursuant to:
- 102 (a) Title 77, Chapter 36, Cohabitant Abuse Procedures Act; [~~or~~]
- 103 (b) Title 78B, Chapter 7, Part 1, Cohabitant Abuse Act[~~;~~];
- 104 (c) Title 78B, Chapter 7, Part 4, Dating Violence Protection Act; or
- 105 (d) Title 78B, Chapter 7, Part 5, Sexual Violence Protection Act.
- 106 Section 3. Section **78B-7-201** is amended to read:
- 107 **78B-7-201. Definitions.**
- 108 As used in this chapter:
- 109 (1) "Abuse" means:

- 110 (a) physical abuse [or];
- 111 (b) sexual abuse;
- 112 (c) any sexual offense described in Title 76, Chapter 5b, Part 2, Sexual Exploitation; or
- 113 (d) human trafficking of a child for sexual exploitation under Section [76-5-308.5](#).
- 114 (2) "Court" means the district court or juvenile court.
- 115 (3) All other terms have the same meaning as defined in Section [78A-6-105](#).

116 Section 4. Section **78B-7-501** is enacted to read:

117 **Part 5. Sexual Violence Protection Act**

118 **78B-7-501. Title.**

119 This part is known as the "Sexual Violence Protection Act."

120 Section 5. Section **78B-7-502** is enacted to read:

121 **78B-7-502. Definitions.**

122 As used in this part:

- 123 (1) "Cohabitant" means the same as that term is defined in Section [78B-7-102](#).
- 124 (2) "Dating partner" means the same as that term is defined in Section [78B-7-402](#).
- 125 (3) "Ex parte sexual violence protective order" means an order issued without notice to
- 126 the respondent in accordance with the requirements of this part.

127 (4) "Protective order" means:

- 128 (a) a sexual violence protective order; or
- 129 (b) an ex parte sexual violence protective order.

130 (5) "Sexual violence" means the commission or the attempt to commit:

- 131 (a) any sexual offense described in Title 76, Chapter 5, Part 4, Sexual Offenses, or
- 132 Title 76, Chapter 5b, Part 2, Sexual Exploitation;
- 133 (b) human trafficking for forced sexual exploitation under Section [76-5-308](#); or
- 134 (c) aggravated human trafficking for forced sexual exploitation under Section
- 135 [76-5-310](#).
- 136 (6) "Sexual violence protective order" means an order issued after notice and a hearing

137 in accordance with the requirements of this part.

138 Section 6. Section **78B-7-503** is enacted to read:

139 **78B-7-503. Sexual violence -- Sexual violence protective orders.**

140 (1) (a) An individual may seek a protective order under this part if the individual has
141 been subjected to sexual violence and is neither a cohabitant nor a dating partner of the
142 respondent.

143 (b) An individual may not seek a protective order on behalf of a child under this part.

144 (2) A petition seeking a sexual violence protective order may not be withdrawn without
145 written order of the court.

146 Section 7. Section **78B-7-504** is enacted to read:

147 **78B-7-504. Sexual violence protective orders -- Ex parte protective orders --**
148 **Modification of orders.**

149 (1) If it appears from a petition for a protective order or a petition to modify an existing
150 protective order that sexual violence has occurred, the district court may:

151 (a) without notice, immediately issue an ex parte sexual violence protective order
152 against the respondent or modify an existing sexual violence protective order ex parte, if
153 necessary to protect the petitioner or any party named in the petition; or

154 (b) upon notice to the respondent, issue a sexual violence protective order or modify a
155 sexual violence protective order after a hearing, regardless of whether the respondent appears.

156 (2) The district court may grant the following relief with or without notice in a
157 protective order or in a modification to a protective order:

158 (a) prohibit the respondent from threatening to commit or committing sexual violence
159 against the petitioner and a family or household member designated in the protective order;

160 (b) prohibit the respondent from telephoning, contacting, or otherwise communicating
161 with the petitioner or a family or household member designated in the protective order, directly
162 or indirectly;

163 (c) order that the respondent:

164 (i) is excluded and shall stay away from the petitioner's residence and its premises;

165 (ii) subject to Subsection (4), stay away from the petitioner's:

166 (A) school and its premises;

167 (B) place of employment and its premises; or

168 (C) place of worship and its premises; or

169 (iii) stay away from any specified place frequented by the petitioner or a family or
170 household member designated in the protective order;

171 (d) prohibit the respondent from being within a specified distance of the petitioner; or

172 (e) order any further relief that the district court considers necessary to provide for the
173 safety and welfare of the petitioner and a family or household member designated in the
174 protective order.

175 (3) The district court may grant the following relief in a sexual violence protective
176 order or a modification of a sexual violence protective order, after notice and a hearing,
177 regardless of whether the respondent appears:

178 (a) the relief described in Subsection (2); and

179 (b) subject to Subsection (5), upon finding that the respondent's use or possession of a
180 weapon poses a serious threat of harm to the petitioner or a family or household member
181 designated in the protective order, prohibit the respondent from purchasing, using, or
182 possessing a weapon specified by the district court.

183 (4) If the petitioner or a family or household member designated in the protective order
184 attends the same school as the respondent, is employed at the same place of employment as the
185 respondent, or attends the same place of worship as the respondent, the court may enter an
186 order:

187 (a) that excludes the respondent from the respondent's school, place of employment, or
188 place of worship; or

189 (b) governing the respondent's conduct at the respondent's school, place of
190 employment, or place of worship.

- 191 (5) The district court may not prohibit the respondent from possessing a firearm:
192 (a) if the respondent has not been given notice of the petition for a protective order and
193 an opportunity to be heard; and
194 (b) unless the petition establishes:
195 (i) by a preponderance of the evidence that the respondent committed sexual violence
196 against the petitioner; and
197 (ii) by clear and convincing evidence that the respondent's use or possession of a
198 firearm poses a serious threat of harm to the petitioner or a family or household member
199 designated in the protective order.
200 (6) After the day on which the district court issues a sexual violence protective order,
201 the district court shall:
202 (a) as soon as possible, deliver the order to the county sheriff for service of process;
203 (b) make reasonable efforts at the hearing to ensure that the petitioner and the
204 respondent, if present, understand the sexual violence protective order;
205 (c) transmit electronically, by the end of the business day after the day on which the
206 court issues the order, a copy of the sexual violence protective order to a local law enforcement
207 agency designated by the petitioner; and
208 (d) transmit a copy of the sexual violence protective order in the same manner as
209 described in Section [78B-7-113](#).
210 (7) (a) A respondent may request the court modify or vacate a protective order in
211 accordance with Subsection (7)(b).
212 (b) Upon a respondent's request, the district court may modify or vacate a protective
213 order after notice and a hearing, if the petitioner:
214 (i) is personally served with notice of the hearing, as provided in the Utah Rules of
215 Civil Procedure, and appears before the district court to give specific consent to the
216 modification or vacation of the provisions of the protective order; or
217 (ii) submits an affidavit agreeing to the modification or vacation of the provisions of

218 the protective order.

219 (8) To the extent that the provisions of this part are more specific than the Utah Rules
220 of Civil Procedure regarding a protective order, the provisions of this part govern.

221 Section 8. Section **78B-7-505** is enacted to read:

222 **78B-7-505. Hearings -- Expiration -- Extension.**

223 (1) (a) Within 20 days after the day on which a district court issues an ex parte sexual
224 violence protective order, the district court shall set a date for a hearing on the petition for a
225 sexual violence protective order.

226 (b) If, at the hearing described in Subsection (1)(a), the district court does not issue a
227 sexual violence protective order, the ex parte sexual protective order expires, unless extended
228 by the district court.

229 (c) The district court may extend the 20-day period described in Subsection (1)(a) only
230 if:

231 (i) a party is unable to be present at the hearing for good cause, established by the
232 party's sworn affidavit;

233 (ii) the respondent has not been served; or

234 (iii) exigent circumstances exist.

235 (d) If, at the hearing described in Subsection (1)(a), the district court issues a sexual
236 violence protective order, the ex parte sexual violence protective order remains in effect until
237 service of process of the sexual violence protective order is completed.

238 (e) A sexual violence protective order remains in effect for one year after the day on
239 which the district court issues the order.

240 (f) If the hearing described in Subsection (1)(a) is held by a commissioner, the
241 petitioner or respondent may file an objection within 10 calendar days after the day on which
242 the commissioner enters the recommended order, and the assigned judge shall hold a hearing
243 on the objection within 20 days after the day on which the objection is filed.

244 (2) If the district court denies a petition for an ex parte sexual violence protective order

245 or a petition to modify a sexual violence protective order ex parte, the district court shall, upon
246 the petitioner's request:

247 (a) set the matter for hearing; and

248 (b) notify and serve the respondent.

249 (3) (a) A sexual violence protective order automatically expires under Subsection
250 (1)(e) unless:

251 (i) the petitioner files a motion before the day on which the sexual violence protective
252 order expires requesting an extension of the sexual violence protective order; and

253 (ii) after notice and a hearing on the motion, the district court finds that an extension of
254 the sexual violence protective order is necessary to protect the petitioner or any party named in
255 the sexual violence protective order.

256 (b) (i) If the district court denies the motion described in Subsection (3)(a), the sexual
257 violence protective order expires under Subsection (1)(e).

258 (ii) If the district court grants the motion described in Subsection (3)(a), the district
259 court shall set a new date on which the sexual violence protective order expires.

260 (iii) A sexual violence protective order that is extended under this Subsection (3), may
261 not be extended for more than one year after the day on which the court issues the order for
262 extension.

263 (iv) A sexual violence protective order may not be extended more than once.

264 (c) After the day on which the district court issues an extension of a sexual violence
265 protective order, the district court shall take the action described in Subsection [78B-7-504\(6\)](#).

266 (4) Nothing in this part prohibits a petitioner from seeking another protective order
267 after the day on which the petitioner's protective order expires.

268 Section 9. Section **78B-7-506** is enacted to read:

269 **78B-7-506. Service of process.**

270 (1) (a) The county sheriff that receives an order from the court under Subsection
271 [78B-7-504\(6\)](#) or [78B-7-505\(3\)](#) shall:

272 (i) provide expedited service for the sexual violence protective order; and
273 (ii) after the sexual violence protective order is served, transmit verification of service
274 of process to the statewide network described in Section 78B-7-113.

275 (b) This section does not prohibit another law enforcement agency from providing
276 service of process if the law enforcement agency:

277 (i) has contact with the respondent; or
278 (ii) determines that, under the circumstances, providing service of process on the
279 respondent is in the best interest of the petitioner.

280 (2) When a sexual violence protective order is served on a respondent in jail, or other
281 holding facility, the law enforcement agency managing the facility shall make a reasonable
282 effort to provide notice to the petitioner at the time the respondent is released from
283 incarceration.

284 Section 10. Section **78B-7-507** is enacted to read:

285 **78B-7-507. Fees -- Forms.**

286 (1) A fee may not be imposed by a court clerk, sheriff, constable, or law enforcement
287 agency for:

288 (a) filing a petition for a protective order;
289 (b) obtaining a protective order; or
290 (c) service of a protective order.

291 (2) (a) The office of the court clerk shall provide forms and nonlegal assistance to an
292 individual seeking to proceed under this part.

293 (b) The Administrative Office of the Courts shall:

294 (i) develop and adopt uniform forms for a petition for a protective order and a
295 protective order in accordance with this part; and
296 (ii) provide the forms to the clerk of each court authorized to issue a protective order.

297 (c) The forms described in this Subsection (2) shall include:

298 (i) a statement notifying a petitioner for a protective order that knowing falsification of

299 any statement or information provided for the purpose of obtaining a protective order may
300 subject the petitioner to criminal prosecution;

301 (ii) language stating violation of a protective order is a class A misdemeanor; and

302 (iii) a space for any information a petitioner is able to provide to facilitate identification
303 of the respondent, including social security number, driver license number, date of birth,
304 address, telephone number, or physical description.

305 (3) If the individual seeking to proceed under this part is not represented by an
306 attorney, it is the responsibility of the court clerk's office to provide:

307 (a) the forms adopted in accordance with Subsection (2);

308 (b) all other forms required to petition for a protective order, including forms for
309 service of process;

310 (c) except as provided in Subsection (4), clerical assistance in filling out the forms and
311 filing the petition, in accordance with Subsection (2);

312 (d) information regarding the means available for service of process;

313 (e) a list of legal service organizations that may represent an individual in an action
314 brought under this part, with the phone numbers of the organizations; and

315 (f) written information regarding the procedure for transporting a jailed or imprisoned
316 respondent to a protective order hearing.

317 (4) A court clerk's office may designate another entity, agency, or individual to provide
318 the service described in Subsection (3)(c), but the court clerk's office is responsible to see that
319 the service of process is provided.

320 (5) A petition for a protective order shall be in writing and verified.

321 (6) (a) A protective order shall be issued in the form adopted by the Administrative
322 Office of the Courts under Subsection (2).

323 (b) A sexual violence protective order or a modification to a protective order issued
324 after notice and a hearing shall include the following language:

325 "Respondent was afforded both notice and opportunity to be heard in the hearing that

326 gave rise to this order. Pursuant to the Violence Against Women Act of 1994, P.L. 103-322,
327 108 Stat. 1796, 18 U.S.C.A. 2265, this order is valid in all the United States, the District of
328 Columbia, tribal lands, and United States territories. This order complies with the Uniform
329 Interstate Enforcement of Domestic Violence Protection Orders Act."

330 Section 11. Section **78B-7-508** is enacted to read:

331 **78B-7-508. Enforcement -- Penalties.**

332 (1) A law enforcement officer shall, without a warrant, arrest an individual if the
333 officer has probable cause to believe that the individual has intentionally or knowingly violated
334 a protective order issued under this part, regardless of whether the violation occurred in the
335 presence of the officer.

336 (2) A violation of a protective order issued under this part is a class A misdemeanor.

337 (3) A petitioner may be subject to criminal prosecution under Title 76, Chapter 8, Part
338 5, Falsification in Official Matters, for knowingly falsifying any statement or information
339 provided for the purpose of obtaining a protective order.

340 Section 12. Section **78B-7-509** is enacted to read:

341 **78B-7-509. Duties of law enforcement officers -- Notice to victims.**

342 (1) A law enforcement officer who responds to an allegation of sexual violence shall
343 use all reasonable means to protect the victim and prevent further sexual violence, including:

344 (a) taking action that, in the officer's discretion, is reasonably necessary to provide for
345 the safety of the victim and any family or household member;

346 (b) making arrangements for the victim and any child to obtain emergency housing or
347 shelter;

348 (c) arranging, facilitating, or providing for the victim and any child to obtain medical
349 treatment; and

350 (d) arranging, facilitating, or providing the victim with immediate and adequate notice
351 of the rights of the victim and of the remedies and services available to victims of sexual
352 violence, in accordance with Subsection (2).

353 (2) (a) A law enforcement officer shall give written notice to the victim in simple
354 language, describing the rights and remedies available under this part.

355 (b) The written notice shall also include:

356 (i) a statement that the forms needed in order to obtain a protective order are available
357 from the court clerk's office in the judicial district where the victim resides or is temporarily
358 domiciled; and

359 (ii) a list of shelters, services, and resources available in the appropriate community,
360 together with telephone numbers, to assist the victim in accessing any needed assistance.

361 Section 13. **Effective date.**

362 This bill takes effect on July 1, 2019.